

REMARKS

The Examiner's Action mailed on March 17, 2004, has been received and its contents carefully considered.

In this Amendment, Applicant has editorially amended the specification, re-written the subject matter of claims 1 and 2 as claims 3 and 4, respectively, canceled claims 1 and 2, and added a further dependent claim 5. Claim 3 is the independent claim, and claims 3-5 are pending in the application. For at least the following reasons, it is submitted that this application is in condition for allowance.

The Examiner's Action has objected to claims 1 and 2 for various informalities, and has rejected claims 1 and 2 as being indefinite. Because claims 1 and 2 have been canceled, these objections and rejections have been rendered moot. However, in drafting claims 3-5, special care has been taken to ensure that these claims comply with all official provisions.

The Examiner's Action has rejected claims 1 and 2 as being obvious over *Kirschmann* in view of *Menze* and *Alwes et al.* Because claims 1 and 2 have been canceled, Applicant will treat this rejection as pertaining to claims 3-5. It is submitted that these claims are *prima facie* patentably distinguishable over the cited combination of references for at least the following reasons.

Applicant's independent claim 3 is directed to an agricultural and gardening fertilizer applicator which includes, *inter alia*, a pliant delivery hose that is coupled to an output port of a container. A flexible auger is disposed within the pliant delivery hose, and extends from a position under an output opening of the container so as to be disposed to receive the fertilizer from the container via the output opening, to a second

end of the pliant delivery hose, and is coupled to a drive mechanism so as to be rotatable when the drive mechanism exerts a rotational force. When the flexible auger is rotated, the auger pushes the received fertilizer through the output port, through the pliant delivery hose, through a pipe, and through a scoop tip, respectively.

Applicant's claimed invention overcomes the disadvantages associated with the prior art applicators, as discussed in page 1 of Applicant's specification. This is accomplished through the pliant delivery hose, and the flexible auger that is disposed within the pliant delivery hose, which allows accurate and easy placement of the scoop tip. This claimed invention is neither disclosed nor suggested by the cited references.

Kirschmann discloses an applicator for granular material, which includes a hopper 5. Disposed under the hopper 5 is a feed shaft 12 which carries thereon spiral auger means which conveys the feed material through openings 11. This reference also discloses that the conveyed feed material is then transmitted to an applicator attachment A by means of flexible transparent material transfer tubes 21.

The Examiner's Action has equated the tubes 21 as being a pliant delivery hose. However, it is initially noted that this reference discloses separating the auger 12 from this tube 21, so that this reference does not disclose or otherwise suggest a flexible auger disposed within a pliant delivery hose, as recited by claim 3. Moreover, it is also noted that this cited reference does not disclose or otherwise suggest an auger that is flexible, as recited by claim 3. Moreover, it is also noted that the cited reference does not disclose an auger that pushes a received fertilizer through an output port, through a pliant delivery hose, through a pipe, and through a scoop tip, respectively, as recited by claim 3. Instead, any conveyance of the feed material through the so-called scoop tip

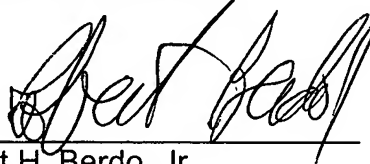
28 disclosed by the cited reference is being accomplished due to the effects of gravity, rather than being pushed by the auger 13.

The Examiner's Action also relies on the teachings of *Menze* and *Alwes et al.* However, these references fail to overcome the above-noted deficiencies of *Kirschmann*. As such, it is submitted that independent claim 3, and the claims dependent therefrom, are *prima facie* patentably distinguishable over the cited references. It is requested that these claims be allowed and that these rejections be withdrawn.

It is submitted that this application is in condition for allowance. Such action and the passing of this case to issue are requested.

Should the Examiner feel that a conference would help to expedite the prosecution of the application, the Examiner is hereby invited to contact the undersigned counsel to arrange for such an interview.

Respectfully submitted,



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Date

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